

Appendix D

3. ELEMENTS OF THE DISTRICT COURT CASE FILE (CRIMINAL)

This chart is intended to list representative items in a criminal case file, and identify characteristics that are relevant to their potential inclusion in an “electronic” version of the file. The types, size, and frequency of file items will vary widely from case to case, dependant in part on whether the case involves felony, misdemeanor, or petty offenses. Federal Rule of Criminal Procedure 58 permits abbreviated procedures in misdemeanor and petty offense cases. In addition, most, but not all, petty offense cases are processed through the Central Violations Bureau in San Antonio, which already relies heavily on the use of automation. While the length and frequency of file items are relevant considerations for implementation of electronic files, such information is not included on the chart because it is too variable to estimate.

NARA archiving requirements and Schedule 2(A)(6) of Chapter XVII of Volume XII of the *Guide to Judiciary Policies & Procedures* govern the retention of criminal case records. Records management policies for micrographic and electronic records have not yet been established.

The column headings and assumptions are explained below:

- **Description of Document or Item.** Because document titles vary from court to court, this column for the most part presents general categories of documents. The purpose is to identify the basic documents that may be part of a case file, whether defined as the public file or something more extensive. While the items have been further subdivided into groups reflecting the progress of a typical case, it is recognized that the same issues may be raised during several phases of the case.
- **Statute or Rule.** This column identifies the statute or rule that is the source of the item.
- **Creator.** This column indicates who is responsible for creating, completing, and/or filing, a document. While the creator of a document is usually its signer, a document created by one entity might be signed by another.
- **Item User.** This column identifies those who must receive the document or item and need access to the document. It is assumed that the public may seek access at any time to unsealed documents in the public file.
- **Current Electronic Availability.** This column identifies whether a document may be available in electronic format, and if so, the format of the information, such as word processing. Several forms are available for use either identified in the *Guide to Judiciary Policies & Procedures* and/or in the rules or statutes. Many courts have also created their own forms. Since text and design of many forms could be made “available” in electronic

form, this situation is conveyed by the notation of “word processing” and parenthetical inclusion of the form number.

- **Access Limits.** This column indicates whether there may be limits on access to a particular file item.
- **Special Considerations.** This column notes areas where there are special considerations for switching to an electronic filing system. If an electronic filing system were to incorporate case management functions, the events that trigger Speedy Trial Act intervals would need to be identified.

A great deal of activity currently occurs in criminal actions before the case is formally “opened” and a criminal number is assigned. Search and arrest warrants may be issued and initial appearances, bail and detention hearings, and other proceedings may be held before a magistrate judge prior to the case “opening.” At the present time, items reflecting these activities may not always be incorporated in the criminal file after the case is “opened.” Consideration should be given to linking such items to specific criminal case file(s).

Elements of the District Court Case File—Criminal

Description of Document or Item	Statute or Rule	Creator	Item User	Current Electronic Availability/Nature of the Information	Access Limits	Special Considerations
Preliminary Proceedings & Case Opening						
arrest warrant or summons (complaint, supporting affidavits, and return)	FRCRP 4; FRCRP 9	law enforcement; clerk; pretrial services	law enforcement; clerk	Word processing (AO238; AO442; AO443; AO91; AO83)	Yes (may be sealed)	signature issues; attachments; whether warrants should be linked to specific criminal case file(s)
search warrant (application, supporting affidavits, and return with inventory) and seizure warrants (PEN Register or wiretap)	FRCRP 41	law enforcement	law enforcement; parties; chambers (if subsequent challenge or request for return of seized property); clerk	Word processing (AO93; AO93A; AO106; AO108; AO109)	Yes (may be sealed)	signature issues; attachments; whether warrants should be linked to specific criminal case file(s)
request for appointment of counsel (financial affidavit), transcripts or special services	FRCRP 44; 18 U.S.C. § 3006A	defendant	clerk; chambers; parties; AO	Word processing (CJA20; CJA21; CJA23; CJA24)		signature issues; attachments
order appointing counsel	FRCRP 44; 18 U.S.C. § 3006A	court	parties; chambers; clerk	Word processing		signature issues
pretrial services report	18 U.S.C. § 3154(1)	pretrial services officer	chambers; parties	Word processing (AO Form)	Yes (not public record)	
motion for detention hearing	18 U.S.C. § 3142(f)	government; court	chambers; clerk; defendant; Marshal's Service	may be oral		
order of release or detention	FRCRP 46; 18 U.S.C. §§ 3142(h) & (i)	court	parties; clerk; probation/pretrial; Marshal's Service	Word processing (AO199A; AO470; AO472)		signature issues
motion for review of release/detention order; responses	18 U.S.C. § 3145	parties	parties; chambers	Word processing		
orders disposing of other preliminary matters		court	parties; chambers; clerk	Word processing		signature issues

Elements of the District Court Case File—Criminal

Description of Document or Item	Statute or Rule	Creator	Item User	Current Electronic Availability/Nature of the Information	Access Limits	Special Considerations
Grand Jury Matters/Proceedings	FRCRP 6	government; defendant	chambers; sometimes defendant		Yes	Proceedings are sealed and not available to the public
document initiating proceedings, i.e. violation notice, complaint, indictment, or information	FRCRP 7; FRCRP 58(b)(1)	government	clerk; parties; chambers	Word processing		signature issues
inter/intra district transfers	FRCRP 20; FRCRP 40	clerk	clerk; Marshal's Service	(AO94; AO466)		
consent to trial before magistrate judge (misdemeanor and some petty offense cases)	18 U.S.C. § 3401	court	clerk; chambers; parties	May be written or oral (AO86; AO86A)		
JS2 (opening card)		automated system	statistics division			
docket sheet		court	clerk; parties; chambers		Yes (may be sealed)	
waiver of preliminary examination	FRCRP 5(c); 18 U.S.C. § 3060(b)	defendant	parties; chambers	Word processing (AO468)		signature issues
waiver of indictment	FRCRP 7(b)	defendant	parties; chambers	Word processing (AO455)		signature issues
other waivers (e.g., Rule 40 hearing, appointment of counsel)		defendant	parties; chambers	may be oral		
Pretrial Preparation						
plea agreement	FRCRP 11(e)	government	chambers; parties	Word processing	Yes (may be sealed)	
order of reference to magistrate judge	28 U.S.C. § 636	court	clerk; parties; chambers			
notice by government of intent to use evidence	FRCRP 12(d)	government; defendant	parties; chambers; clerk	Word processing		

Elements of the District Court Case File—Criminal

Description of Document or Item	Statute or Rule	Creator	Item User	Current Electronic Availability/Nature of the Information	Access Limits	Special Considerations
notice of alibi, insanity defense, defense based on public authority	FRCRP 12.1 FRCRP 12.2; FRCRP 12.3	defendant	parties; chambers; clerk	Word processing	Yes (may be sealed)	
scheduling motions	FRCRP 12	parties; chambers	parties; chambers; clerk; witnesses; pretrial/probation; Marshal's Service	Word processing	Yes (may be sealed)	
discovery motions	FRCRP 16	parties; chambers	parties; chambers; witnesses	Word processing	Yes (may be sealed)	
"case-dispositive" or substantive motions (e.g., to suppress)	FRCRP 12	parties; chambers	parties; chambers; witnesses (depending on local procedures)	Word processing	Yes (may be sealed)	
orders granting/ denying motions	FRCRP 12	court	parties; clerk	may be oral or written (word processing)	Yes (may be sealed)	signature issues
scheduling/other procedural orders and notices	FRCRP 12(c)	court	parties; clerk	may be oral or written (word processing)	Yes (may be sealed)	signature issues
magistrate judge reports and recommendations (R&R)	28 U.S.C. § 636(b)	court	parties; clerk; chambers	Usually word processing	Yes (may be sealed)	signature issues; attachments; triggers deadlines for objections
appeal of magistrate judge orders or objections to R&R; responses	28 U.S.C. § 636(b)	parties	parties; clerk; chambers	Word processing		
subpoena; deposition subpoena	FRCRP 17	parties; court	witnesses; parties; clerk	(AO89; AO90)		
pretrial memoranda		parties	chambers; parties	Word processing		
Trial Documents						
courtroom minute sheets		court	clerk	ICMS		
jury list		court	parties; chambers		May be restricted	
witness statements	FRCRP 29	parties	parties; chambers			

Elements of the District Court Case File—Criminal

Description of Document or Item	Statute or Rule	Creator	Item User	Current Electronic Availability/Nature of the Information	Access Limits	Special Considerations
exhibits made part of record (e.g., papers, audiotapes, videotapes)		parties	clerk		Yes	may include materials not readily available in electronic form
motion for judgment of acquittal	FRCRP 29	defendant	parties; chambers			
jury instructions	FRCRP 30	court, parties	parties; chambers	Word processing		
Judgment and Post-Judgment						
presentence report	FRCRP 32(b); 18 U.S.C. § 3552	probation officer	parties; chambers; pretrial/probation	Word processing	Yes	Report is confidential
presentence memoranda/objections	FRCRP 32(b)	parties	parties; chambers; clerk	Word processing		
judgment and commitment	FRCRP 32(d); 18 U.S.C. § 3553	court	parties; clerk; chambers; Marshal's Office; probation/pretrial; Federal Corrections	Word processing (AO245; AO245A; AO245S; AO246; AO246A)		signature issues
order of release/detention pending sentence or appeal	18 U.S.C. § 3143	court	parties; clerk; Marshal's Office; probation/pretrial	Word processing		signature issues
post-judgment motions (e.g., new trial, in arrest of judgment, review of sentence)	FRCRP 33, FRCRP 34, FRCRP 35	defendant	parties; chambers; clerk	Word processing		
decisions/opinions		court	parties; clerk	Word processing		signature issues
JS 3 closing card		automated system	statistics division			
appeal of magistrate judge's judgment in misdemeanor case	FRCRP 58(g); 18 U.S.C. § 3402	defendant	parties; clerk; chambers	May be word processing		triggers deadline for responsive pleading
record on appeal of magistrate judge's judgment in misdemeanor case	FRCRP 58(g)	clerk	chambers; parties			

Elements of the District Court Case File—Criminal

Description of Document or Item	Statute or Rule	Creator	Item User	Current Electronic Availability/Nature of the Information	Access Limits	Special Considerations
decision on appeal of misdemeanor case	FRCRP 58(g); 18 U.S.C. § 3402	court	clerk; chambers; parties	Word processing		
notice of appeal to court of appeals	FRAP 3	defendant; government	parties; clerk; chambers; probation/pretrial			
FRAP 24 certificate re: proceeding IFP on appeal	FRAP 24	court	court of appeals; chambers; clerk			
record on appeal	FRAP 10	clerk	court of appeals			
28 U.S.C. § 2255 petition	28 U.S.C. § 2255	defendant	parties; chambers; clerk	Word processing (AO243)		signature issues; attachments; may be filed in underlying criminal action with subsequent opening of civil file
Other Relevant Materials						
medical report (e.g., mental examination)		parties, court or physician	parties; chambers; clerk		May be sealed	
petition for violation of probation or supervised release	FRCRP 32.1	probation or pretrial services officer; government	parties; chambers; probation/pretrial; Marshal's Service			
supplemental proceedings (e.g., attorney admissions, attorney's fee petitions, contempt proceedings)		parties and court	clerk; chambers			relationship with earlier proceedings on which fee request or contempt allegation is based
certificates of service (for various filings) (as dictated by local rules)		parties	clerk			
receipt of transfer of probation case	18 U.S.C. § 3605	parties, court	parties; clerk, chambers; probation/pretrial			
reinstatement of federal benefits		parties, court	parties; chambers; clerk	(AO249)		